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BP America Inc.

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BY HAND DELIVERY

Department of the Interior
Minerals Management Service
Attention: Policy and Management Improvement
1849 C Street, N.W.
Room 4223
Washington, D.C. 20240-0001

Advance Notice of Proposed Rulemaking
“The Open and Non-Discriminatory Movement of Oil and Gas as
Required by the Outer Continental Shelf Lands Act”

Re: BP Pipelines (North America) Inc.’s Comments Regarding Oil Pipelines on the OCS

Ladies and Gentlemen:

BP Pipelines (North America) Inc. (“BP Pipelines”) respectfully submits these comments regarding oil pipelines in response to the Minerals Management Service’s (“MMS”) Advance Notice of Proposed Rulemaking (“ANOPR”) regarding the Open and Non-Discriminatory Movement of Oil and Gas as Required by the Outer Continental Shelf Lands Act, 69 Fed. Reg. 19137 (Apr. 12, 2004).¹

Oil pipelines operating on the Outer Continental Shelf (“OCS”) have a statutory duty under the Outer Continental Shelf Lands Act (“OCSLA”) to provide “open and non-discriminatory access to both owner and non-owner shippers.” 43 U.S.C. § 1334(f)(1)(A). Imposing new obligations on OCS oil pipelines to reinforce their already-existing non-discrimination obligations is not necessary.

¹ The comment deadline set forth in the ANOPR was Friday, June 11, 2004. Because the Federal government was closed on June 11, 2004, to mourn the death of President Ronald Reagan, BP Pipelines is timely filing these comments with MMS on the next business day, Monday, June 14, 2004.

First, the existing complaint-based system reflects Congress' light-handed approach to oil pipeline regulation.

Second, numerous statutory protections are already in place to ensure that all OCS oil producers receive open and non-discriminatory pipeline access.

Third, the existing complaint-based system works, promoting extensive OCS development, as the MMS recently observed.

For the foregoing reasons and as more fully described herein, the MMS should retain Congress' and the FERC's existing light-handed approach to oil pipeline regulation and allow shippers to use a complaint-based system to address any access issues that arise in the future.

BP PIPELINES' INTEREST IN THIS PROCEEDING

BP Pipelines is a stand-alone corporation within BP p.l.c. ("BP") that owns and/or operates pipeline assets of BP and joint venture interests in the lower-48 states. BP Pipelines operates approximately 10,000 miles of pipelines owned by it and its subsidiaries, affiliates, and joint ventures, and holds joint venture interests in another approximately 7,500 miles of pipelines that are operated by third parties. BP Pipelines operates numerous oil and natural gas pipelines in the OCS. As an owner and operator of FERC-jurisdictional oil and natural gas pipelines, as well as offshore oil and natural gas gathering systems, BP is very conscious of the non-discrimination requirements that govern its conduct. Therefore, BP has separated its pipeline business from other functions within the BP family, such as marketing and production.

COMMENTS

A. FERC, Congress, and the Courts Have Promoted Light-Handed Regulation of Oil Pipelines.

The Advance NOPR represents at least the second agency proceeding to address the open and non-discriminatory access obligation that the OCSLA imposes on OCS oil pipelines. When FERC adopted its OCSLA rules in Order No. 639, it affirmatively considered and rejected proposals to apply those rules to OCS oil pipelines. "Duke, Tejas, and Williams query why our regulations are directed exclusively at OCS gas service providers, and not OCS oil service providers as well, since the open and non-discriminatory provisions of the OCSLA apply with equal force to both OCS gas and oil operations. Here we have elected to confine our considerations to gas matters, given that we have found rates for transportation on oil pipelines to be just and reasonable...." *Regulations Under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf*, Order No. 639, 65 Fed. Reg. 20354, 20365 (Apr. 17, 2000) (footnote omitted).

FERC's approach to OCS oil pipeline regulation reflects Congress' decision to impose light-handed regulation on oil pipelines. As FERC noted: "Many constraints commonly

associated with utility-type regulation, such as review and approval of construction or acquisition, and abandonment or sale of facilities, were not imposed on oil pipelines. This has been interpreted as reflecting a Congressional intent to allow market forces freer play within the oil pipeline industry than was allowed for other common carrier industries.” *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992*, Order No. 561, 58 Fed. Reg. 58753, 58755 (Nov. 4, 1993) (footnote omitted).

The D.C. Circuit has similarly recognized Congress’ intent to limit regulation of oil pipelines: “[We] may infer a congressional intent to allow a freer play of competitive forces among oil pipeline companies than in other common carrier industries and, as such, we should be especially loath uncritically to import public utilities notions into this area without taking note of the degree of regulation and of the nature of the regulated business.” *See Farmers Union Central Exchange v. Federal Energy Regulatory Commission*, 584 F.2d 408, 413 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 995 (1978).

Consistent with Congress’ intent, the approach adopted by the FERC when it considered OCSLA regulations, and the D.C. Circuit’s caution to avoid unnecessary oil pipeline regulation, the MMS should not impose new regulatory obligations on OCS oil pipelines. Instead, the MMS should retain the existing complaint-based system, whereby any aggrieved shipper can file a complaint seeking a MMS order that a pipeline has not provided reasonable access and should be required to do so.

B. Current Protections in Place for OCS Oil Shippers Have Ensured Non-Discriminatory Access.

In light of the existing and successful history of light-handed regulation for oil pipelines, the MMS should impose additional regulations on oil pipelines only if there is compelling evidence that the existing statutory mechanisms for protecting shippers are inadequate. Therefore, the starting point for evaluating the need for additional OCS oil pipeline rules is the OCSLA itself. Section 5(e) of the OCSLA requires that the Secretary of the Interior grant pipeline rights-of-way on the OCS “upon the express condition that oil or gas pipelines shall transport or purchase without discrimination....” 43 U.S.C. § 1334(e). Moreover, “every permit, license, easement, right-of-way, or other grant of authority for the transportation by pipeline on or across the outer Continental Shelf” shall require that the pipeline “provide open and non-discriminatory access to both owner and non-owner shippers.” 43 U.S.C. § 1334(f)(1)(A).

At one time, there may have been questions about the nature of the OCSLA’s “open and non-discriminatory” access requirement as it applied to oil pipelines. For example, in *Bonito Pipe Line Company*, 61 FERC ¶ 61,050 (1992), *affirmed*, *Shell Oil Co., et al. v. Federal Energy Regulatory Commission*, 47 F.3d 1186 (D.C. Cir. 1995), Pennzoil petitioned FERC for an order declaring that it was not obligated to interconnect its pipeline to an oil pipeline constructed by Shell. FERC rejected the petition and required the interconnection. Since that time, FERC has not adjudicated a single complaint against an oil pipeline under the OCSLA. The lack of adjudicated cases reflects the fact that the OCSLA alone, without any additional regulatory requirements, has worked in ensuring open and non-discriminatory access.

In addition to the open access requirement, the OCSLA provides other protections to oil pipeline shippers. For example, FERC retains its authority to issue “ratable take” orders. *See* 43 U.S.C. § 1334(e).

Even if a shipper is unable to secure relief from FERC under its authority, shippers always have the ability to bring a complaint to the MMS seeking non-discriminatory access. This is exactly the right that shippers have today with regard to oil pipelines. Further, in certain circumstances, shippers have a private right of action under the OCSLA. *See* 43 U.S.C. § 1349. As discussed below, this complaint-based system has not been an impediment to the vibrant development of the OCS.

C. Offshore Oil Markets are Working and There is No Need for New Regulation.

The offshore oil markets are working, and there is no need to risk upsetting an already-functioning market with additional, unnecessary regulation. The MMS’s May 2004 report, *Deepwater Gulf of Mexico 2004: America’s Expanding Frontier*, succinctly captures the phenomenal growth in offshore production and transportation, particularly with regard to deepwater developments:

- an 840% increase in deepwater oil production since 1992
- 2,200 additional active leases in the Gulf of Mexico since 1992
- a 50% increase in deepwater producing projects in the past few years
- a deepwater production increase of more than 100,000 barrels of oil per day above 1997 figures
- 432 miles of deepwater oil pipelines less than or equal to 12 inches in diameter approved in 2001-2003
- 498 miles of deepwater oil pipelines greater than 12 inches in diameter approved in 2001-2003

Over the past decade, and particularly the last few years, there have been significant increases in OCS exploration, drilling, and production, not only by major oil producers such as BP, but by “nonmajor” oil companies as well. The increases in OCS activity and the increases in market participants signal a robust market. Because the market is functioning properly, the MMS should not impose additional regulations that could lead to increased costs and force changes to market participants’ business practices.

Of course, this vibrant activity reflects the nature of OCS development. OCS transportation infrastructure development is expensive and often takes place in tandem with production development. There is a strong incentive for project sponsors to spread the costs associated with such transportation infrastructure across as large a volume of oil as possible. This, in turn, leads to new pipes being constructed as large as technologically possible. Moreover, production curves create the need for new supplies to fill the pipelines.

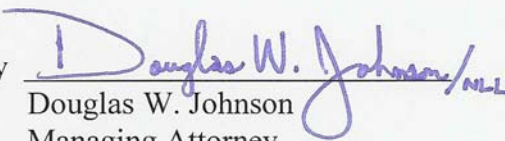
All of these market dynamics have led to predictable results. As discussed above, once the open access principles were established in *Bonito Pipe Line Company*, the FERC has not needed to adjudicate any complaints about OCS oil pipeline access.

CONCLUSION

The MMS commenced this proceeding in response to the D.C. Circuit's finding that the FERC did not have authority to enforce the open and non-discriminatory access provisions of the OCSLA. Even before, when FERC thought that it had such authority, FERC relied upon Congress' intent and did not impose regulatory obligations on OCS oil pipelines. The existing rules have promoted vibrant oil pipeline OCS development and the MMS should follow FERC's and Congress' lead.

Respectfully submitted,

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